

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.514 of 2006

Decided on: August 21, 2006

M/s Coronation Power Pvt. Ltd.

...Petitioner.

VERSUS

State of H.P. and another

...Respondents.

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The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the petitioner: Ms Jyotsna Rewal Dua, Advocate.

For the respondents: Mr.M.S. Chandel, Advocate General,
with Mr. J.K. Verma, Deputy Advocate
General, for respondent No.1.

Mr. Ajay Chandel, Advocate, for
respondent No.2.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Petitioner-company made an application on 7th June, 2002 (Annexure P-1) to respondent No.2 for allotment of UHL-BEAS-Hydel Project (1.2 MW). There had been a lot of correspondence between the petitioner and respondent No.2. On 7th June, 2004, vide Annexure P-4, the petitioner was informed by respondent No.2 that respondent No.1 had approved the allotment of Project site, subject to certain terms and conditions (mentioned therein) and that it should sign the Memorandum of Understanding

Whether reporters of the Local Papers may be allowed to see the judgment?

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with respondent No.1 by visiting the office of respondent No.2 on any working day. Thereafter, another communication was sent by respondent No.2 informing the petitioner to submit certain papers and to deposit the security money. The case of the Writ Petitioner is that it submitted the requisite papers and also paid the amount of security but respondent No.2 then demanded some more information which had already been submitted besides demanding additional amount of money on account of security. The Writ Petitioner has sought a direction to the respondents to execute the Memorandum of Understanding in its favour.

3. The respondents have filed replies. Respondent No.2 has stated that the petitioner was required to submit a certificate from the concerned DFO that the area where the Project was intended to be set-up did not fall in a sanctuary and also to submit the resolution passed by the Board of Directors of M/s S.R. Industries Ltd. undertaking to extend financial support for the execution of the Project. A letter was addressed to S.R. Industries Ltd. also requiring it to submit a copy of the resolution passed by its Board of Directors whereby they committed to render financial support to the petitioner to execute the Project. Mr. Amit Mahajan, who claims to be a Director of the petitioner-company as also of S.R. Industries Ltd., wrote back that the resolution would be submitted later on and that the Memorandum of Understanding be signed in the meanwhile. Thereafter, respondent No.1 took the decision to cancel the allotment of the Project site made in favour

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of the petitioner vide Annexure P-4 and allotted this work to another concern.

4. The Writ Petitioner has filed rejoinder wherein it is stated that a copy of the resolution of the Board of Directors of S.R. Industries Ltd. was sent to respondent No.2, vide communication dated 27th February, 2006 (Annexure P-17). A copy of the resolution has been filed with the rejoinder. A reading of the rejoinder shows that it was passed on 27th January, 2006.

5. During the course of the hearing of the matter, it has been conceded that prior to passing of the resolution, dated 27th January, 2006, there was no resolution/decision by the Board of Directors of S.R. Industries Ltd., that it would give financial support to the writ petitioner for execution of the Project, in question. That means at the time when the papers were submitted by the petitioner to the respondents in 2002 or even in June, 2005, when respondent No.2 required the petitioner and S.R. Industries Ltd. to submit a copy of the resolution of Board of Directors of S.R. Industries Ltd., there was no resolution by the Board of Directors of the later named company for rendering financial support to the petitioner for executing the Project, in question. If that is so, the proposal submitted by the writ petitioner to the respondents itself was incomplete and invalid because there was no commitment by S.R. Industries Ltd. to lend financial support.

6. Learned counsel for the petitioner submitted with a great deal of vehemence that in various other cases (instances have been cited in the rejoinder), in which S.R. Industries Ltd. was

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stated to have committed to lend financial support to the executing companies, resolutions passed by the Board of Directors of S.R. Industries Ltd. had not been called for by the respondents and Memorandum of Understandings had been signed without any such resolution being a part of the record. We do not think that this argument helps the writ petitioner in any manner. If the respondents have committed some wrongs in other matters, knowingly or unknowingly, the same cannot be used as precedents for granting the prayer made in the present writ petition. The fact remains that the papers submitted by the writ petitioner were incomplete and rather contained incorrect information as regards the claim that S.R. Industries Ltd. had committed to lend financial support. Companies speak through resolutions of their Boards of Directors. When there is no resolution/decision by the Board of Directors of the Company, the company cannot be made liable for the commitments made, acts done or undertakings given by a functionary of the company, howsoever high he may be in the hierarchy of its functionaries.

7. For the foregoing reasons, we dismiss the writ petition.

8. In view of the dismissal of the main petition, all the pending CMPs also stand disposed of.

(V.K. Gupta), C.J.

August 21, 2006(sd)

(Surjit Singh), J.